

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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RASHAUN BLANFORD,

*Plaintiff,*

-against-

**DECLARATION OF  
ERIN PFENDLER**

9:21-CV-0231  
(TJM/CFH)

CORRECTION OFFICER S. BANKS, et al.,

*Defendants.*

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ERIN PFENDLER, on the date noted below and pursuant to § 1746 of title 28 of the United States Code, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

1. I am employed by the New York State Department of Corrections and Community Supervision (“DOCCS”). I am currently the Incarcerated Grievance Program (“IGP”) Supervisor at Marcy Correctional Facility (“Marcy”). I have been employed at Marcy as the IGP supervisor since January of 2015. As the IGP Supervisor, I am fully familiar with the procedures available to incarcerated individuals for filing and processing grievances at Marcy.

2. I submit this declaration based on my personal knowledge and upon review of the applicable regulations, DOCCS Directives, and records kept by DOCCS in the ordinary course of business.

3. Although I am not a party to this lawsuit, I submit this declaration in support of defendants’ motion for summary judgment.

Incarcerated Grievance Program at Marcy

4. The Incarcerated Grievance Program at DOCCS is provided for in Part 701 Title 7 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“N.Y.C.R.R.”). The grievance process is also described in detail in DOCCS Directive #4040. NYCRR Title 7 and Directive #4040 are available in the Marcy law library.

5. To start the grievance process, an incarcerated individual sends a written complaint to the grievance office. A complaint may be written on a grievance form available to incarcerated individuals at Marcy, or on regular paper. A grievance must be filed with the grievance office within twenty-one (21) calendar days of the alleged occurrence that the incarcerated individual seeks to grieve. Grievances received after the 21 calendar days have elapsed will be considered untimely and will not be filed. However, if there are mitigating circumstances, which are provided for in Section 701.6(g) of Directive #4040, an incarcerated individual may submit a written request for permission to file a late grievance, so long as the written request is received within 45 days of the alleged incident.

6. Pursuant to 7 N.Y.C.R.R. § 701.5(a)(1) grievances must be filed at the facility where the incarcerated individual is housed even if the grievance pertains to another facility. A grievance is considered filed for purposes of 7 N.Y.C.R.R. § 701.5(a)(1) the date that it is received and processed by the facility grievance office, not when the grievance was dated or mailed by the incarcerated individual.

7. Once an incarcerated individual’s grievance is determined to be timely, the grievance is logged, coded, and titled. An investigation request is sent to investigate the incarcerated individual’s claims. After the investigative report is returned, a grievance hearing is

conducted by the Inmate Grievance Resolution Committee (“IGRC”). Within two (2) days following the hearing, the IGRC’s determination is logged and forwarded to the incarcerated individual, who is advised that—if he or she disagrees with some or all of the IGRC’s determination—he or she must appeal the IGRC determination to the Superintendent within seven (7) calendar days. Occasionally, a grievance may be resolved informally prior to a hearing before the IGRC.

8. DOCCS has an expedited procedure for the review of grievances alleging harassment by DOCCS employees. If an incarcerated individual filed a grievance alleging staff misconduct, after the same is logged, coded and titled, it is forwarded directly to the Superintendent’s office the day it is received, where an officer with a higher ranking than the staff member alleged to have committed the misconduct is assigned to investigate the claims. Grievances alleging staff misconduct receive a Superintendent response, rather than an IGRC determination. *See* 7 N.Y.C.R.R. 701.8(a).

9. Upon issuance of the Superintendent’s response in either instance, an incarcerated individual who is not satisfied can appeal to the Central Office Review Committee (“CORC”), the third and final step under DOCCS’ Incarcerated Grievance Program.

10. At Marcy, all documents, or copies thereof, related to a particular grievance, including the grievance, investigations, and appeals, are stored in the Marcy grievance office in the regular course of that office’s activities as they are created or received. The Marcy grievance office keeps all such documents for grievances filed in the current year and in the previous four (4) calendar years—thus, our office has on file all grievances filed in Marcy from January 1, 2018

to the present. All such documents are made and maintained in the regular course of facility operations and it is a regular practice to make and maintain such records.

Grievances filed by Incarcerated Individual Rashaun Blanford

11. In preparing to draft this Declaration, I have reviewed the grievance files for plaintiff, Rashaun Blanford (DIN: 18-B-0908) (“plaintiff”), which are maintained in the regular course of business at the Marcy grievance office.

12. It is my understanding that plaintiff asserts that defendants, Correction Officer S. Banks, Rehabilitation Coordinator B. Demeree, Registered Nurse S. Derocco and Correction Officer D. Johnson (collectively “defendants”), violated his Eighth Amendment rights. Specifically, plaintiff claims that the defendants subjected him to excessive force and sexual assault, failed to intervene when he was subjected to excessive force, were indifferent to his serious medical needs, and committed medical malpractice while he was housed at Marcy from February 2, 2021 through February 6, 2021.

13. Plaintiff’s claims in this action are the proper subject for a grievance under the IGP.

14. Throughout the time plaintiff was incarcerated at Marcy, from January 21, 2021 through March 4, 2021, he had full access to Marcy’s grievance office, including the ability to file grievance complaints. Annexed hereto as **Exhibit “A”** is a copy of Plaintiff’s Chronological History Display showing when he was housed at Marcy.

15. If plaintiff either filed or attempted to file any grievances related to the claims at issue in this matter while he was housed at Marcy, there would be a record of it in Marcy’s grievance office.

16. A review of the records maintained by Marcy's grievance office indicates that plaintiff did not file any grievances related to the claims at issue in this matter while he was housed at Marcy. Annexed hereto as **Exhibit "B"** is a list of all the grievances Plaintiff filed while he was housed at Marcy.

17. Accordingly, plaintiff did not file any grievances with Marcy's grievance office concerning his claims against the defendants outlined in ¶ 12 above, that are the subject of this action.

18. My review of plaintiff's records maintained in the grievance office also indicates that plaintiff did not submit a written request for an extension of time to file a grievance concerning his allegations set forth in ¶ 12 above.

19. During my review of plaintiff's records, it appears plaintiff did file a prison rape elimination act complaint against defendants Banks and Johnson, but never availed himself of the grievance process, despite apparently knowing how to do so, as outlined in **Exhibit B**.

20. The deadline for plaintiff to file a grievance relating to his claims in this action was February 23, 2021, and the deadline for plaintiff to submit a written request for an extension of time to file a late grievance was March 18, 2021.

21. Since DOCCS' records reflect that the plaintiff did not file a grievance against any of the named defendants with respect to the claims outlined in ¶ 12 above; plaintiff has failed to exhaust his administrative remedies as required by 42 U.S.C. §1997e(a).

Dated: September 03, 2022  
Marcy, New York



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Erin Pfendler

# Exhibit A

07/21/21

LOCATOR SYSTEM  
 CHRONOLOGICAL HISTORY DISPLAY  
 04 GREAT MEADOW

KLOCM6B

DIN 18-B-0908 NYSID 02895300-N FACILITY GRT MEAD BHU LOCATION BH-02-D08  
 NAME BLANFORD, RASHAUN DOB 05/27/96 SEX M E/R NB

EFFECTIVE DATE	DATE ENTERED	SENDING FACILITY	RECEIVING FAC/ OUTCOUNT LOCATION	TRANSACTION TYPE	CELL
01/19/21	01/19/21	GRT MEAD BHU	DWNSTATE REC	INTRANS RECV	01-0D-035
01/21/21	01/21/21	DWNSTATE REC	MARCY RMHU	INTRANS SENT	01-0D-035
01/21/21	01/21/21	GRT MEAD BHU	MARCY RMHU	TRANSFER IN	RM-A1-017
03/04/21	03/04/21	MARCY RMHU	ATTICA GEN	TRANSFER OUT	RM-A1-024
03/04/21	03/04/21	MARCY RMHU	ATTICA GEN	TRANSFER IN	RB-CN-001
06/21/21	06/21/21	ATTICA GEN	GRT MEAD BHU	TRANSFER OUT	RB-CE-014
06/21/21	06/21/21	ATTICA GEN	AUBURN DEPOT	INTRANS RECV	0D-08-16B
06/22/21	06/22/21	AUBURN DEPOT	GRT MEAD BHU	INTRANS SENT	0D-08-16B
06/22/21	06/22/21	AUBURN DEPOT	DWNSTATE REC	INTRANS RECV	SH-1E-018
06/26/21	06/26/21	DWNSTATE REC	1061	OUTSIDE HOSP	HS-00-X01
06/30/21	06/30/21		DWNSTATE REC	OUTCOUNT RET	HS-00-X01
07/09/21	07/09/21	DWNSTATE REC	1061	OUTSIDE HOSP	HS-00-X01
07/13/21	07/13/21	DWNSTATE REC	GRT MEAD BHU	INTRANS SENT	- -

<ENTER> CONTINUE    <PF3> EXIT(FUNCTION)    <PF4> RETURN    <CLEAR> EXIT(SYSTEM)  
 <PF7> SCROLL BACKWARD    <PF8> SCROLL FORWARD

# **Exhibit B**





## Corrections and Community Supervision

ANDREW M. CUOMO  
Governor

ANTHONY J. ANNUCCI  
Acting Commissioner

July 21, 2021

### CERTIFICATE OF RECORDS

I, Anthony Rose, A/IGPS, do hereby certify that this is an exact and true copy of the requested documents for Inmate BLANFORD, RASHAUN DIN18B0908.

NAME: \_\_\_\_\_

Anthony Rose

Acting Inmate Grievance Program Supervisor

Sworn to before me this 21  
day of July 2021.

Melissa D. Phillips  
Notary Signature

MELISSA D. PHILLIPS  
Notary Public in the State of New York  
Qualified in Herkimer County 01PH6337549  
My Commission Expires Feb. 29, 2024

***BLANFORD, R., 18B0908, RMHU***

<i>NUMBE</i>	<i>CODE</i>	<i>DATE FILED</i>	<i>DATE OF HEARING</i>	<i>TITLE</i>	<i>IGRC DECISION</i>	<i>DATE SUBMITTED (SUPT)</i>	<i>DATE RETURNED (SUPT)</i>	<i>RESOLUTION NOTES</i>
MCY 00262 -1	23	1/25/2021	1/27/2021	DENIED TABLET	D			DISMISSED AND CLOSED